The Ka Wah Bank Ltd v Low Chung Song & Ors

HIGH COURT (KUALA LUMPUR) — SUIT NO D5-24-170 OF 1991
HAIDAR J
29 AUGUST 1997

Civil Procedure *— Reciprocal enforcement of foreign judgments — Setting aside of service of order — Order provided for service of order on defendant at a specific venue — Whether service ordinarily within jurisdiction in disregard of terms of order was good service — Reciprocal Enforcement of Judgments Act 1958*

Civil Procedure *— Service — Foreign judgment — Order provided for service of order on defendant at a specific venue — Whether service ordinarily within jurisdiction in disregard of terms of order was good service — Whether service ought to be set aside — Reciprocal Enforcement of Judgments Act 1958*

Pursuant to an application by the plaintiff, a judgment of the Supreme Court of Hong Kong dated 9 July 1991 obtained by the plaintiff was registered as a judgment of the High Court of Malaya in accordance with the Reciprocal Enforcement of Judgments Act 1958 ('the Act'). The amended order made in pursuance thereof provided, inter alia, for service of the judgment unto the second defendant specifically in Hong Kong. On 22 November 1995, the plaintiff filed a request for service of document abroad and Notice of Registration of Foreign Judgment on the second defendant. The attempt to serve the same unto the second defendant in Singapore was unsuccessful. However, the plaintiff appeared to have successfully served the order and Notice of Registration of Foreign Judgment together with a covering letter unto the second defendant on 3 September 1996 at Kuala Lumpur. On 27 September 1996, the second defendant filed an application to set aside the purported service of 3 September 1996. The issue was whether such service can be deemed to be good service on the face of the terms of the amended order that such service is to be effected in Hong Kong.

Held, setting aside the service of the amended order:

By the terms of the amended order, it was specifically ordered that service be effected on the second defendant in Hong Kong. There was a limited order for service unto the second defendant in Hong Kong and since the service was effected in Malaysia, such service could not be properly said to be good service as it was not effected with leave of the court (see p 512C–F); *Bonwell v Preston* (1908) 24 TLR 756 followed.

[Bahasa Malaysia summary

Menurut satu permohonan oleh plaintif, satu penghakiman Mahkamah Agung Hong Kong bertarikh 9 Julai 1991 yang diperolehi oleh plaintif didaftarkan sebagai satu penghakiman Mahkamah Tinggi Malaya menuruti Akta Penguatkuasaan Bersaling Penghakiman 1958

('Akta tersebut'). Perintah yang terpinda dibuat menurutnya memperuntukkan, antara lain, untuk penyampaian penghakiman kepada defendan kedua khususnya di Hong Kong. Pada 22 November 1995, plaintif memfailkan satu permintaan untuk penyampaian dokumen di luar negeri dan Notis Pendaftaran Penghakiman Asing pada defendan kedua. Percubaan untuk menyampaikan yang sama kepada defendan kedua di Singapura tidak berjaya. Namun demikian, plaintif nampaknya berjaya menyampaikan perintah dan Notis Pendaftaran Penghakiman Asing bersama dengan surat iringan kepada defendan kedua pada 3 September 1996 di Kuala Lumpur. Pada 27 September 1996, defendan kedua memfailkan satu permohonan untuk mengetepikan penyampaian 3 September 1996. Isu adalah sama ada penyampaian sedemikian boleh dikatakan penyampaian berkesan pada zahir terma perintah terpinda mengatakan bahawa penyampaian harus dilaksanakan di Hong Kong.

Diputuskan, mengetepikan penyampaian perintah terpinda:

Menerusi terma perintah terpinda, ia diperintahkan secara khusus bahawa penyampaian dilaksanakan kepada defendan kedua di Hong Kong. Terdapat perintah penyampaian yang terhad kepada defendan kedua di Hong Kong dan oleh kerana penyampaian dilaksanakan di Malaysia, penyampaian demikian tidak boleh dikatakan penyampaian yang berkesan kerana ia tidak dilaksanakan dengan kebenaran mahkamah (lihat ms 512C–F); *Bonwell v Preston* (1908) 24 TLR 756 diikut.]

Notes

For cases on reciprocal enforcement of foreign judgments, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2871–2879.

For cases on service, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2963–3038.

Case referred to

Bonwell v Preston (1908) 24 TLR 756 (folld)

Legislation referred to

Reciprocal Enforcement of Judgments Act 1958

Rules of the High Court 1980 O 20 r 11, O 67

Christopher Leong (*Chooi & Co*) for the judgment creditor.

David Morais (*Gopal Sreenevasan* with him) (*Sivananthan*) for the second judgment debtor.

Cur Adv Vult

Haidar J: There were two applications before me, namely:

(1) An application by the second defendant dated 27 September 1996 (encl 23) pursuant to O 67 of the Rules of the High Court 1980 ('the RHC') and the Reciprocal Enforcement of Judgments Act 1958 ('the Act').

(2) An application by the plaintiff dated 27 May 1997 (encl 42) pursuant to O 20 r 11 of the RHC.

In encl 23, the second defendant sought the following orders:

(1) that the service of the amended order dated 11 December 1991 and the Notice of Registration of Foreign Judgment dated 23 November 1995 of this Honourable Court purportedly effected on the second defendant on 3 September 1996 be set aside;

(2) in the alternative, that the registration of the judgment of the Supreme Court of Hong Kong 1987, No A4191 dated 9 July 1991 pursuant to the Notice of Registration of Foreign Judgment dated 23 November 1995 be set aside;

(3) further and/or in the alternative, that the hearing of this summons be adjourned until the expiration of such period as appears necessary to be reasonably sufficient to enable the second defendant to challenge the judgment of the Supreme Court of Hong Kong 1987, No A4191 dated 9 July 1991;

(4) further and/or in the alternative, that execution of the judgment of the Supreme Court of Hong Kong 1987, No A4191 dated 9 July 1991 pursuant to the Notice of Registration of Foreign Judgment dated 23 November 1995 of this Honourable Court, be stayed pending the determination of an application to be lodged in the Supreme Court of Hong Kong to challenge the judgment of the Supreme Court of Hong Kong 1987, No A4191 dated 9 July 1991 and pending the determination of the application herein;

(5) that the costs of this application be paid by the plaintiff to the second defendant; and

(6) such further or other relief and directions as this Honourable Court deems just and fit.

It is supported by the affidavit of Low Chang Hian, the second defendant (encl 21) and the affidavit of M Puvanandran, an advocate and solicitor of the High Court, Singapore and practising at Messrs Nathan Isaac & Co of 111, Northbridge, #23-02, Peninsular Plaza, Singapore 179098.

In encl 42, the plaintiff sought the following orders:

(1) that the amended order dated 11 December 1991 be amended pursuant to O 20 r 11 of the RHC in the manner shown in green, a copy of which is annexed hereto as Annexure 'A';

(2) that the costs of this application be borne by the plaintiff;

(3) such further or other order as this Honourable Court deems fit to grant.

It is supported by the affidavit of Lim Boon Kick, an officer of the plaintiff (encl 41). A

Initially, both counsel agreed that the court should proceed to hear encl 42 first. However, after a short adjournment for counsel to sort out matters, on reflection, I was of the opinion that the court should proceed to hear encl 23 first. I then directed that encl 23 be heard first as it was filed earlier than encl 42 and a perusal of the nature of the application vide encl 42 would seem to try and defeat the application vide encl 23. As encl 23 was handled by Mr Christopher Leong as counsel for the plaintiff and he was away in Hong Kong, I allowed the adjournment of encl 23 so that Mr Christopher Leong could argue. Mr David Morais, counsel for the second defendant, did not object to the adjournment. B C

At the hearing of encl 23, both counsel submitted skeletal submissions.

After hearing both counsel, I allowed the application of the second defendant in terms of prayers (1) and (2) and costs.

The plaintiff filed an appeal confined only to the order granting prayer (1), that is, service issue. D

Prayer (1) — The service of the amended order dated 11 December 1991 and the Notice of Registration of Foreign Judgment dated 23 November 1995 of this Honourable Court purportedly effected on the second defendant on 3 September 1996 be set aside E

The plaintiff by way of an originating summons dated 23 August 1991 (encl 1) prays that para 2 of the judgment dated 9 July 1991 of the Supreme Court of Hong Kong whereby it was adjudged that the first to fourth defendants do pay the plaintiff the sum of HK$114,047,621.47 and US$2,570,585.53 together with interest thereon at the judgment rate until payment may be registered as a judgment in the High Court of Malaya pursuant to the Act. F

The originating summons is supported by the affidavit of Mr Christopher SF Leong, the solicitor having conduct of the matter (encl 2). G

The judgment of the Supreme Court of Hong Kong is exhibited as 'CL-1' to encl 2.

By way of an order of the court obtained on 11 December 1991, (encl 8) it was ordered that the originating summons be read and heard as an ex parte originating summons. H

It would be convenient to reproduce the order dated 11 December 1991 (which was amended on 30 June 1993) as it is a relevant factor for the consideration of the court in determining the issue before it. The order reads: I

Before The Honourable Justice Dato' VC George
High Court Kuala Lumpur
This 11 December 1991 In Chambers

AMENDED ORDER

UPON THE APPLICATION of The Ka Wah Bank Limited the Judgment Creditor in this action AND UPON READING the Originating Summons dated 23 August 1991 and the affidavit of Christopher SF Leong affirmed on 23 August 1991 both filed herein AND UPON HEARING Mr Christopher SF Leong of counsel for the abovenamed Judgment Creditor IT IS ORDERED that the aforesaid Originating Summons be hereby read and heard as an Ex Parte Originating Summons AND IT IS ORDERED that leave be granted to the abovenamed The Ka Wah Bank Limited to amend the aforesaid Originating Summons by adding the words '... 1987, No A4191 ...' after the words '... High Court in The Supreme Court of Hong Kong ...'. AND IT IS ORDERED that para 2 of the judgment dated 9 July 1991 of the High Court In The Supreme Court of Hong Kong 1987, No A4191 whereby it was adjudged that the abovenamed Low Chung Song, Low Chang Hian, Low Chun Seng and Victor Tan Khai Chong do pay the abovenamed The Ka Wah Bank Limited the sums of HK$114,047,621.47 and US$2,570,585.53, which is equivalent in Ringgit to RM41,855,477.08 and RM7,184,786.56 respectively, together with interest thereon at the judgment rate until payment, which is 12.66% per annum from 9 July 1991 to 31 July 1991 and thereafter at 13.5% per annum from 1 August 1991 until payment, be registered as a judgment of the High Court of Malaya pursuant to the Reciprocal Enforcement of Judgments Act 1958.

IT IS FURTHER ORDERED that the abovenamed Low Chung Song, Low Chang Hian, Low Chun Seng and Victor Tan Khai Chong be at liberty to apply to set aside the said registration within 30 days after service upon them in Taiwan (Republic of China), Hong Kong, Taiwan (Republic of China) and Taiwan (Republic of China) respectively of the notice of such registration pursuant to r 7 of O 67 if they have grounds for so doing, and execution upon the said judgment will not issue until after the expiration of that period or any extension of the period granted by the Court; or if an application be made to set aside the registration until such application has been disposed of.

IT IS ORDERED that the abovenamed Low Chung Song, Low Chang Hian, Low Chun Seng and Victor Tan Khai Chong do pay the costs of this application.

Dated this 11 December 1991.

— LS —
Senior Assistant Registrar
High Court of Malaya
Kuala Lumpur

On 22 November 1995, the plaintiff filed Request For Service of Document Abroad and Notice of Registration of Foreign Judgment (encl 17) on the second defendant. The attempt to serve the documents on the second defendant in Singapore was apparently not successful (see encls 19 and 20).

However, it seemed the plaintiff managed to serve the amended order dated 11 December 1991 and the Notice of Registration of Foreign Judgment together with the accompanying letter dated 2 September 1996, on the second defendant on 3 September 1996 at about 10.50am at the

Public Lobby, Ground Floor, Wisma Denmark, 86, Jalan Ampang, 50450 Kuala Lumpur. (See the affidavit of service of Lim Boon Kick, an officer of the plaintiff at encl 20a). Lim Boon Kick deposed that he knew the second defendant and further deposed that after the second defendant read the documents and the accompanying letter, he (the second defendant) threw the documents on the floor and refused to sign acknowledgement of receipt of the documents on the accompanying letter.

In the result, the second defendant filed encl 23.

By the terms of the amended order dated 11 December 1991, it was specially ordered that service be effected on the second defendant in Hong Kong. I do not think that it can be disputed that ordinary service by Lim Boon Kick on the second defendant here can be said to be not a good service under the RHC. What is at issue here is whether such service can be deemed to be good service on the face of the terms of the amended Order that such service is to be effected in Hong Kong. Perhaps the case of *Bonwell v Preston* (1908) 24 TLR 756 may be of assistance in this respect.

In *Bonwell*'s case, the order was for service of the writ out of jurisdiction on the defendant 'at Yokohama or elsewhere in the Empire of Japan' and the defendant left Yokohama and went to Hong Kong where it was served upon him. It was held by the Court of Appeal that since there was a limited order for service of the writ out of jurisdiction — that is, limited to Yokohama or some other place in the Empire of Japan — and that it was served in Hong Kong, clearly the service was not effected with leave of the court. Similarly here, there was a limited order for service of the documents on the second defendant in Hong Kong and since the service was effected in Malaysia, such service cannot properly be said to be good service as it was not effected with leave of the court.

In the result I ruled that the service of the amended order including the Notice of Registration of Foreign Judgment dated 23 November 1995 was bad and set it aside.

Order accordingly.

Reported by Lew Chee Seong